



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 1859-99
29 July 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 July 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 28 August 1975 for four years. The record reflects that you were advanced to LCPL (E-3) and served without incident until 1 September 1977 when you received nonjudicial punishment (NJP) for absence from your appointed place of duty. On 6 September 1977 you were reported in an unauthorized absentee (UA) status and remained absent until you were apprehended by civil authorities on 16 March 1978 on a charge of hit and run driving.

A court date was set for 16 June 1978 and you were turned over to military authorities. However, on 17 March 1978 you broke restriction and were reported UA again. You were apprehended by civil authorities on 12 May 1978.

On 26 May 1978, you submitted a request for a discharge under other than honorable conditions for the good of the service to escape trial by court-martial for the foregoing periods of UA totalling 247 days. In your request, you stated the reason you

wanted to be discharged was because you did not want to stay in the infantry any longer and were denied an opportunity to change your military occupational specialty. Prior to submitting the request for discharge, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Thereafter, the discharge authority approved your request and directed discharge under other than honorable conditions. You were so discharged on 31 May 1978.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, letters of reference, employment resume, and the fact that it has been more than 21 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of an NJP and the fact that you requested discharge rather than face trial by court-martial for two periods of UA totalling more than eight months. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. You have provided neither probative evidence nor a convincing argument in support of your application. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director